

STATE OF MICHIGAN
COURT OF APPEALS

KRYSTA D. GAGNE,

Plaintiff-Appellant,

v

JOSEPH BRENT SCHULTE,

Defendant-Appellee.

UNPUBLISHED
February 28, 2006

No. 264788
Oakland Circuit Court
LC No. 2004-057749-NI

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

O’CONNELL, P.J. (*dissenting*).

A drunk driver, defendant, turned his truck into oncoming traffic and hit plaintiff’s vehicle head on. The impact threw plaintiff into the windshield. Her torso bent the steering wheel, and her knee slammed into the dashboard. She suffered a concussion, lost consciousness, and was rushed to a nearby medical center. Although defendant does not dispute that plaintiff tore her anterior cruciate ligament (ACL) and medial meniscus in the collision, he argues, and the majority agrees, that the subsequent impairment of her ability to work, walk, and perform other daily functions more than one year after the accident did not affect her overall life as a matter of law. Because I disagree, I would hold that she can sue defendant in tort and fully recover her damages.

Defendant does not dispute that plaintiff tore her ACL during the collision with his truck on October 30, 2003. Nor does defendant dispute that the torn ACL impaired plaintiff’s ability to walk, which is an important body function. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Nor does defendant challenge the fact that plaintiff’s torn ACL and meniscus was objectively manifested and required extensive reconstructive surgery. The only inquiry remaining is whether the impairment affected plaintiff’s general ability to lead her normal life. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). This Court reviews de novo a trial court’s ruling on a summary disposition motion. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

To determine whether the year-long impairment to plaintiff’s ability to walk, kneel, twist, and turn affected her general ability to lead her life, “a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Id.* at 132-133. More specifically, we should consider, “(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual

impairment, and (e) the prognosis for eventual recovery.” *Id.* at 133. “While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff’s life.” *Id.* at 135.

For the first few weeks after the accident, plaintiff could barely move about with crutches, and her father assisted her with such tasks as getting to the bathroom and the bathtub. Although her mobility improved somewhat over the course of the next four months, plaintiff’s knee did not mend. Plaintiff worked as a housecleaner, a job requiring her to kneel and twist. She only worked a few days in the months following the accident, and she was much slower and could not bend. During this time, her knee was too swollen to wear pants and would occasionally “give out.”

Roughly five months after the accident, plaintiff returned to the doctor’s office complaining of continuing pain in her knee, so an MRI was performed. It was only then that plaintiff’s torn ACL and meniscus were detected, and a surgical approach to resolving the problem was discussed. The treating doctor testified that with a torn ACL, he typically would restrict the patient from running, playing sports, and any other “activities that would require a stable knee.” He added that he would have restricted her from cleaning houses because the job “requires a lot of different movements, certainly pushing, bending, twisting. So all those would be types of movements that we would restrict her from doing.” Although plaintiff temporarily returned to housekeeping work, she complained of pain and instability in her knee, which made it difficult for her to ascend and descend stairs. She only kept the job for about a week.

Major reconstructive surgery on plaintiff’s knee was performed on August 25, 2004, about ten months after the accident. Plaintiff was placed under general anesthetic, and an arthroscope was placed through the inside of the joint. The surgeon detected a “large bucket-handle tear” from the back of the meniscus around to the front, allowing a fragment of the torn tissue to “bucket-handle” into and out of the joint. Other horizontal tears indicated that the larger tear had spread. Because the surgeon could not repair plaintiff’s tear, he removed the torn portion of meniscus. According to her surgeon, the meniscus will not regenerate, and the permanent lack of protection, support, and cushion once provided by the meniscus means that “there is a greater force directed at that level of bone.” The surgeon then turned to removing and replacing plaintiff’s torn ACL. The surgeon drilled tunnels into plaintiff’s shin and thigh bones near the joint, then laced the allograft (donated) tissue through the tunnels. The tunnels were filled with bone plugs, which were then secured with screws. The surgeon described this as “a very big surgery” which ordinarily requires about three weeks just to control the patient’s pain and swelling.

Following the surgery, plaintiff was restricted from bending, twisting, stooping, or otherwise exerting her reconstructed knee. When her surgeon followed up with plaintiff, he detected serious muscle atrophy in plaintiff’s right quadriceps, which further destabilized plaintiff’s knee. The dangers of this loss of support around her knee led doctors to continue the limitations on plaintiff’s activities until the muscles regained their strength. Plaintiff went to physical therapy to rebuild the muscle, but when plaintiff returned more than seven months after surgery, her surgeon still did not feel her muscles had strengthened enough that she was ready to return to housecleaning work. According to the surgeon, “even things like descending stairs are difficult for patients with quad atrophy, very difficult, and such that the knee will feel like it wants to buckle or give out, and at times it may, producing a higher chance of further injury.”

Although plaintiff worked hard and improved her leg strength, restrictions regarding ice skating, rollerblading, gymnastics, dancing, and similar types of recreational activities that plaintiff once enjoyed were never lifted. The evidence demonstrated that plaintiff has permanently lost a measure of stability in her knee, and that she has a greater chance of osteoarthritis in the future.

Plaintiff was only twenty-one years old at the time of the head-on collision and has been hobbled indefinitely by the torn ACL and meniscus it caused. The injury required major surgery to repair, and her knee will never be the same. Because plaintiff raised a genuine issue of fact whether these injuries affected the general course of her life, I would reverse the trial court.

/s/ Peter D. O'Connell